IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.490 OF 2006
IN
NOTICE OF MOTION NO. OF 2006
IN
B.C.C.C. SHORT CAUSE SUIT NO.1399 OF 2006
WITH
CIVIL APPLICATION NO.608 OF 2006

Narang Overseas Pvt.Ltd. ...Appellant

Versus

Ashok Narang & Ors. ...Respondents

.....

Mr.C.U.Singh with Mr.S.N.Trivedi i/b Mr.Kishore D. Abhichandani for Appellant.

Mr.Rajiv Narula i/b Jhangiani Narula & Associates for Respondent No.1.

None for Respondent No.2.

Ms.Sowmya Srikrishnan i/b Crawford Bayley & Co. for Respondent No.3.

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CORAM: A.M.KHANWILKAR, J.

JULY 14, 2006.

P.C.

1. Heard Counsel for the parties. Admit.

Mr.Narula waives notice for Respondent No.1.

Ms.Srikrishnan waives notice for Respondent No.3.

None appears for Respondent No.2. Respondent No.2 is not a necessary party for the purpose of deciding the issue that arises in the present appeal.

2. As short question is involved, Appeal is taken up for hearing forthwith, by consent.

3. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court dated May 6, 2006 in Notice of Motion No.Nil in S.C.Suit No.1398 of 2006. By this order, relief in terms of prayer clauses (a) and (b) of the Notice of Motion has been granted by the Trial Court in favour of Respondent No.1/Plaintiff. The same reads thus :

> "(a) that pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass a temporary order and injunction restraining the Defendants No.1 & 2 by themselves, their servants, agents and representatives from obstructing, interfering with, preventing the officers and workmen of Defendant No.3 from coming upon the compound of Beach View CHS Ltd., situated at 93, Bhulabhai Desai Road, Bombay 400026 and install the electric meter and restore electric connection to

Flat No.9;

(b) that pending the hearing and final disposal an Order and direction be given to the Sr.Inspector of Police of the Nana Chowk Police Station to provide police protection and assistance to the Plaintiff in implementing the orders of the Court."

4. Having considered the rival submissions, although, it is the case of Respondents 1 and 2 that there is no dispute that the Respondent No.1/Plaintiff is the owner of the suit premises, however, even on fair reading of the Judgment under Appeal, it is not possible to discern that such finding has been recorded by the Trial Court. On the other hand, the reason of the Trial Court proceeds on the assumption that the Respondent No.1/Plaintiff claims to be the occupier, for which reason, was entitled for the relief claimed in the Notice of Motion. Indeed, an owner can also be the occupier. However, the Trial Court will have to clearly spell out as to whether the concerned party has established the case of ownership or occupier as is asserted in the pleadings filed before the lower Court, for that purpose, the appropriate course to my mind is to relegate the parties before

the Trial Court, who in turn, shall record a clear finding on the factum as to the ownership and/or occupier of suit flat before granting reliefs in terms of prayer clauses (a) and (b) of the Notice of Motion.

5. The impugned order is accordingly set-aside with the above observations. The Notice of Motion is restored to the file of the Trial Court, to its original number, to be decided on its own merits in accordance with law.

6. The Trial Court shall dispose of the Notice of Motion as expeditiously as possible, preferably by 11th August 2006.

7. Parties to appear before the Trial Court on 20th July 2006, on which date, the Trial Court shall assign date of hearing of the Notice of Motion or proceed to hear the Motion on the same day as may be advised, so as to ensure that the Notice of Motion is disposed of by 11th August 2006. Parties shall exchange pleadings on or

before 28th July 2006 which will be filed in the Registry of the Trial Court, if so advised.

8. Appeal and the cognate Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.